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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,283	04/24/2001	Robert W. Schrier	CRNC.86595	5323

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EXAMINER

PASS, NATALIE

ART UNIT PAPER NUMBER

3626

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/842,283	<b>Applicant(s)</b> SCHRIER ET AL.	
	<b>Examiner</b> Natalie A. Pass	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2006 & 24 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the amendment filed 26 May 2006 and the Summary of Telephonic Interview filed 24 May 2006. Claims 1 and 14-21 have been previously cancelled. Claims 2-4 and 6-13 have been amended. Claims 2-13 remain pending.
2. Examiner notes that when amending claims, the text of any added or deleted subject matter must be shown by properly marking the added or deleted text. However, Examiner notes that, for example, in claim 8 at line 3, the word "interactively " appears to be added subject matter to claim 8, as it has not been recited in previous claim recitations, however the lack of underlining makes this unclear. For the purpose of applying art, Examiner assumes this limitation to read “ ... interactively receiving ...”

### ***Double Patenting***

3. The rejection of claims 2-6 under the judicially created doctrine of obviousness-type double patenting is hereby withdrawn due to the amendment filed 26 May 2006.

### ***Claim Rejections - 35 USC § 101***

4. The rejection of claims 2-13 under 35 U.S.C. 101 is hereby withdrawn due to the amendment filed 26 May 2006.

***Claim Rejections - 35 USC § 112***

5. The rejection of claims 2-13 under 35 U.S.C. 112 is hereby withdrawn due to the amendment filed 26 May 2006.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 4, 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Villa-Real, U.S. Patent Number 4,293,845 for substantially the same reasons given in the previous Office Action (paper number 01022006), and further in view of Greer article, RXPert: A PROTOTYPE EXPERT SYSTEM FOR FORMULARY DECISION MAKING, Annals of Pharmacotherapy, February, 1992, Vol. 26, hereinafter known as Greer. Further reasons appear hereinbelow.

(A) Claim 2 has been amended to now recite,

- "[...] receiving a request to create a electronic medication order for a patient [...]" in line 3;
- "[...] displaying a list of available medications [...]" in line 4;

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- "[...] determining whether the selected medication is to be expertly dosed [...]" in line 7;
- "[...] if the selected medication is to be expertly dosed,
  - (1) expertly dosing the selected medication using a knowledge base, and
  - (2) creating an electronic medication order based on the selected medication; andif the selected medication is not to be expertly dosed,
  - (1) displaying to the user standard dosage recommendations for creating an electronic medication order [...]" in lines 8-17;
- "[...] (3) creating an electronic medication order based on the selected medication, the selected frequency of administration, the selected route of administration, the selected dose amount, and the selected dose form [...]" in lines 28-31.

As per these newly added limitations, Villa-Real teaches a method as analyzed and discussed in the previous office action (paper number 01022006).

Villa-Real fails to explicitly disclose

receiving a request to create a electronic medication order for a patient;

displaying a list of available medications;

determining whether the selected medication is to be expertly dosed;

if the selected medication is to be expertly dosed,

- (1) expertly dosing the selected medication using a knowledge base, and
- (2) creating an electronic medication order based on the selected medication; and

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if the selected medication is not to be expertly dosed,

(1) displaying to the user standard dosage recommendations for creating an electronic medication order; and

(3) creating an electronic medication order based on the selected medication, the selected frequency of administration, the selected route of administration, the selected dose amount, and the selected dose form.

However, the above features are well-known in the art, as evidenced by Greer.

In particular, Greer teaches

receiving a request to create a electronic medication order for a patient (Greer; page 244, column 2, lines 8-11);

displaying a list of available medications (Greer; page 244, column 2, lines 8-11, page 247, column 2, paragraph 3 to page 248, column 1, paragraph 2);

determining whether the selected medication is to be expertly dosed (Greer; page 244, column 1, paragraph 1 to column 2, paragraph 2, page 245, column 2, paragraph 2, page 246, column 1, paragraph 4);

if the selected medication is to be expertly dosed,

(1) expertly dosing the selected medication using a knowledge base (Greer; page 245, column 1, paragraph 2), and

(2) creating an electronic medication order based on the selected medication (Greer; page 245, column 1, paragraph 2); and

if the selected medication is not to be expertly dosed,

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(1) displaying to the user standard dosage recommendations for creating an electronic medication order (Greer; page 247, column 2, paragraph 3 to page 248, column 1, paragraph 2); and

(3) creating an electronic medication order based on the selected medication, the selected frequency of administration, the selected route of administration, the selected dose amount, and the selected dose form (Greer; page 248, column 2, paragraph 1, to page 249, column 1, paragraph 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Villa-Real to include these limitations, as taught by Greer, with the motivations of utilizing decision-support tools or aids to support pharmacists in dealing with a variety of expert problems and in evaluation of the use of drugs in order to improve the human process (Greer; page 244, column 2, paragraph 3).

The remainder of claim 2 is rejected for the same reasons given in the prior Office Action (paper number 01022006, section 10, page 7), and incorporated herein.

(B) The amendments to claims 4 and 6 appear to have been made merely to correct minor typographical or grammatical errors. While these changes render the language of the claims smoother and more consistent, they otherwise affect neither the scope and breadth of the claims as originally presented nor the manner in which the claims were interpreted by the Examiner when applying prior art within the previous Office Action.

As such, the recited claimed features are rejected for the same reasons given in the prior Office Action (paper number 01022006, section 10, pages 7-8), and incorporated herein.

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(C) Claim 7 differs from method claim 2, in that it is a system rather than a method for creating an electronic medication order.

System claim 7 repeats the subject matter of claim 2, respectively, as a set of elements rather than a series of steps. As the underlying processes of claim 2 have been shown to be fully disclosed by the teachings of Villa-Real and Greer in the above rejection of claim 2, it is readily apparent that the system disclosed by Villa-Real and Greer includes the apparatus to perform these functions. As such, these limitations are rejected for the same reasons given above for method claim 2, and incorporated herein.

8. Claims 3, 5, 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Villa-Real, U.S. Patent Number 4,293,845 and Greer article, RXPert: A PROTOTYPE EXPERT SYSTEM FOR FORMULARY DECISION MAKING, Annals of Pharmacotherapy, February, 1992, Vol. 26, hereinafter known as Greer, as applied to claim 2 above, and further in view of Brimm et al., U.S. Patent Number 5,072,383 for substantially the same reasons given in the previous Office Action (paper number 01022006). Further reasons appear hereinbelow.

(A) Claims 8, 10 have been amended to now recite,

- "[...] determining a plurality of routes associated with the selected medication [...]" in line 4, respectively;
- "[...] determining a plurality of dose forms or dose amounts available for the selected medication and selected route [...]" in lines 9-10, 8-9 respectively;



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- "[...] creating an electronic medication order based on the selected medication, the selected route, and the selected dose form or dose amount [...]" in lines 15-16, 14-15, respectively.

As per these newly added limitations, Villa-Real Greer and Brimm teach a method for creating an electronic medication order, further comprising:

determining a plurality of routes associated with the selected medication (Greer; page 246, column 2, paragraph 2, page 248, column 1, paragraphs 1-2, page 248, Figure 2);

determining a plurality of dose forms or dose amounts available for the selected medication and selected route (Greer; page 246, column 2, paragraph 2, page 248, column 1, paragraphs 1-2, page 248, Figure 2);

creating an electronic medication order based on the selected medication, the selected route, and the selected dose form or dose amount (Greer; page 248, column 2, paragraph 1, to page 249, column 1, paragraph 2).

The remainder of claims 8, 10 is rejected for the same reasons given in the prior Office Action (paper number 01022006, section 12, pages 10-11), and incorporated herein.

The motivations for combining the respective teachings of Villa-Real, Greer and Brimm are as given in the rejections of claims 2 and 3 above, and incorporated herein.

(B) Claim 12 has been amended to now recite,

- "[...] determining a plurality of routes associated with the selected medication [...]" in line 4;

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- "[...] determining a plurality of frequencies available for the selected medication and selected route [...]" in lines 9-10;
- "[...] creating an electronic medication order based on the selected medication, the selected route, and the selected frequency[...]" in lines 15-16.

As per these newly added limitations, Villa-Real, Greer and Brimm teach a method for creating an electronic medication order, further comprising:

determining a plurality of routes associated with the selected medication (Greer; page 246, column 2, paragraph 2, page 248, column 1, paragraphs 1-2, page 248, Figure 2);

determining a plurality of frequencies available for the selected medication and selected route (Greer; page 246, column 2, paragraph 2, page 248, column 1, paragraphs 1-2, page 248, Figure 2); Examiner interprets Greer's teachings of pluralities of strengths and dosages to be a form of dose frequencies;

creating an electronic medication order based on the selected medication, the selected route, and the selected frequency (Greer; page 248, column 2, paragraph 1, to page 249, column 1, paragraph 2).

The remainder of claim 12 is rejected for the same reasons given in the prior Office Action (paper number 01022006, section 12, pages 13-14), and incorporated herein.

The motivations for combining the respective teachings of Villa-Real, Greer and Brimm are as given in the rejections of claims 2 and 3 above, and incorporated herein.

(C) As per the amendments to claim 3, 9, 11, and 13 these appear to have been made merely to correct minor typographical or grammatical errors. While these changes render the language of the claims smoother and more consistent, they otherwise affect neither the scope and breadth of the claims as originally presented nor the manner in which the claims were interpreted by the Examiner when applying prior art within the previous Office Action.

As such, the recited claimed features are rejected for the same reasons given in the prior Office Action (paper number 01022006, section 12, pages 9-11, 13-14), and incorporated herein.

(D) Claim 5 has not been amended and is rejected for the same reasons given in the previous Office Action (paper number 01022006, section 12, page 10), and incorporated herein.

### ***Response to Arguments***

9. Examiner notes that in the Summary of Telephonic Interview, filed 24 May 2006, Applicant refers to “proposed amendments,” however Examiner notes that these “proposed amendments” have not been made of record, according to Applicant’s instructions.

10. Applicant's arguments filed 31 May 2006 have been fully considered but they are moot in view of the new ground(s) of rejection.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**12. Any response to this final action should be mailed to:**

Box AF

Commissioner of Patents and Trademarks  
Washington D.C. 20231

**or faxed to:** (571) 273-8300.

For formal communications, please mark  
"EXPEDITED PROCEDURE".

For informal or draft communications, please label  
"PROPOSED" or "DRAFT" on the front page of the  
communication and do NOT sign the communication.

After Final communications should be labeled "Box AF."

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie A. Pass whose telephone number is (571) 272-6774. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (571) 272-6776. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist

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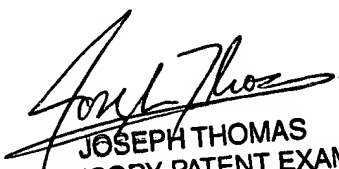
whose telephone number is (571) 272-3600. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Natalie A. Pass

August 7, 2006



JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER